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# In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 308

E. A. LABORATORIES, INC., PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

### OPINIONS BELOW

The opinion of the court below (R. A. 166–171)[1] is reported at 188 F. 2d 885. The final decision and order of the Board (B. A. 1–23) are reported at 86 NLRB 711. The findings, conclusions, and recommendations of the trial examiner (B. A. 32–159) are reported at 80 NLRB 637–699.

[1] References "B. A." and "R. A." are to the appendices to the briefs filed in the court below by the Board and petitioner (respondent below) respectively. Wherever in a series of references, a semicolon appears, references preceding the semicolon are to the findings of the Board; those following are to the supporting evidence.

## JURISDICTION

The decree of the court below was entered on June 20, 1951 (R. A. 190–193). The petition for a writ of certiorari was filed on September 10, 1951. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U. S. C. 1254 (1).

## STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act, as originally enacted (49 Stat. 449, 29 U. S. C., 151, *et seq.*), and as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), and of the War Labor Disputes Act (57 Stat. 163, 50 U. S. C. App. 1501), are set forth in the Appendix, *infra,* pp. 20–24.

## QUESTIONS PRESENTED

1. Whether the record supports the Board's finding that petitioner agreed to reinstate participants in the 1944 strike.

2. Whether the Board properly ordered back pay to the 1944 strikers for the period during which petitioner rejected their mass application for reinstatement and offered reinstatement only to nonleaders of the strike upon condition that they join a company-dominated union.

3. Whether the Board properly ordered back pay to the 1944 strikers notwithstanding an agreement between petitioner and the Union under

which the latter agreed to waive its members' claims for back pay.

4. Whether failure to observe the "cooling-off" period provided by the War Labor Disputes Act resulted in forfeiture of the protection of the National Labor Relations Act.

5. Whether, where a bargaining obligation had previously run jointly to the International Union and a Local affiliated therewith, the Board properly ordered bargaining with the International, which had revoked the charter of the Local and assumed its assets and liabilities.

## STATEMENT

### INTRODUCTION

Upon the usual proceedings under Section 10 of the National Labor Relations Act,[2] the Board found that petitioner, acting primarily through its president, J. M. Aufiero, had repeatedly violated Sections 8 (1), (2), (3), and (5) of the Act. In this Court, as in the court below, petitioner concedes that by discriminatorily discharging eight union leaders it violated Section 8 (3); that by organizing and dominating a company union it violated Section 8 (2); that by refusing to bar-

[2] The proceedings were begun under the original Act of July 5, 1935 (c. 372, 49 Stat. 449, 29 U. S. C., 151, *et seq.*), and concluded after the effective date of the amendments made by the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*). The amendments effected no change material to the issues herein.

gain with the Union;[3] it violated Section 8 (5), and that by threats, surveillance, and other forms of interference, restraint, and coercion it violated Section 8 (1). Petitioner contests the Board's order only insofar as it requires (1) the payment of back pay to the participants in the 1944 strike, (2) reinstatement of the 1945 strikers with back pay, and (3) bargaining with the Union. The evidence which is directly material to the issues raised by petitioner is summarized below, but it must be read as constituting only part of the entire record of continuing, unremitting, and—for the most part—conceded unfair labor practices.

## I.

### THE 1944 STRIKE

#### A. THE FACTS FOUND BY THE BOARD

In September 1944, petitioner's employees went on strike (B. A. 65; 850, 884). The trial examiner found that the strike was provoked by petitioner's flagrant unfair labor practices, and that petitioner's repeated violations of its contract with the Union had terminated the contract and abrogated the no-strike clause therein (B. A. 69–74, 96–98). Petitioner contended that the strike was in breach of contract and further that its purpose was to compel petitioner to deal with three union officials who were awaiting trial on charges

[3] International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO.

of attempting to extort money from Aufiero (B. A. 65, 96; 885, 888). The Board itself, for reasons discussed *infra,* pp. 8–9, found it unnecessary to determine the cause of the strike or its legality (B. A. 2–4).

Following the walk-out, petitioner repeatedly urged the employees, other than an undetermined number of union officials and strike leaders, to return to work (B. A. 75–78; 313, 794–798, 905–915). Petitioner conditioned their return, however, upon their abandonment of the Union in favor of a company union, and also insisted upon freedom to "discipline" the strike leaders.[4] The employees refused to return under such terms (B. A. 77–78, 80–81; 362–365, 434–435, 629–630, 742–744, 791–799).

On October 24, the Regional War Labor Board issued a directive ordering that the employees return to work, that petitioner reinstate them, and that disputes between the parties, including the question of disciplining strike leaders, be submitted to arbitration (B. A. 79; 184–185, 788).[5] In

[4] The three officials who had been arrested for extortion are not here involved. Although at the beginning of the strike the Union insisted that these three also be put back to work, it soon abandoned that position and made no further demands in their behalf (B. A. 78; 182–183).

[5] This was the first of a series of directives to the same general effect issued by the War Labor Board, accepted by the Union, but rejected by petitioner (B. A. 79, 81–82, 85, 106–107). As a result of petitioner's repeated refusals to comply with the War Labor Board's orders, the Director of Economic Stabilization on January 31, 1945, directed that unless

accordance with the directive, several hundred strikers, led by the union leaders, reported at the plant the next morning ready for work (B. A. 79; 186–187, 293, 313, 359). However, the plant gates were closed and petitioner's representative refused to admit them (B. A. 79; 187–188, 359).

Again on November 1, the employees attempted to return to work but were met by Aufiero's demand that they join a company union and return without their strike leaders, conditions which were unacceptable to the strikers (B. A. 80–81; 362–365, 629–630, 742–744).

On October 20, 1944, the three extortionists were convicted in the Kings County Court, and Judge Samuel Liebowitz set November 10 as the date for presentence hearing (B. A. 77, 83; 188, 801). On November 10 the courtroom was filled to overflowing with strikers (B. A. 83; 189). Judge Liebowitz, perturbed at the sight of so many workers out on strike during the war, called upon the Union's international representative, Newman, to lead the strikers back to work (B. A. 83; 189, 444). Newman replied that the employees had unsuccessfully attempted to return to the plant before and were only too willing to repeat the attempt (*ibid.*). The Judge then turned to Aufiero and asked:

---

petitioner complied, all its government contracts be terminated and its priority allocations revoked (B. A. 107; 804). Petitioner yielded to this ultimatum, and the strike was finally settled in April 1945 (B. A. 107; 804–805).

> Mr. Aufiero, if these people come to your plant tomorrow morning, ready to go to work, would you let them go into the plant and go back to work?

Aufiero replied:

> I will open my plant tomorrow morning and these people can come back to work (B. A. 83–84; 189–190, 280, 293, 415, 432, 445, 463).

The next morning, at the regular starting hour, Newman fulfilled his promise to the Judge and led the employees to the plant ready to go to work. The plant gates were locked, and the guard stated that he had no instructions to open them or to admit the employees. Newman called Aufiero and told him what had occurred at the plant. Aufiero, instead of explaining why he had not kept his promise to Judge Liebowitz, responded by maligning Newman (B. A. 84; 190–192, 293, 360–361, 463–464).

Subsequent efforts of the employees to return to work were again met by petitioner's insistence that the employees abandon the Union and form a company union (B. A. 85–86, 88; 424–425, 432–435, 453–454, 480–481, 535–536). Many of the strikers who applied for reinstatement were plainly told that their union activity, or prominence on the picket line, barred them from future employment with petitioner (B. A. 87–88; 281–282, 415–417, 435–437, 455–456, 678–679, 699–700).

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Finally, as a result of governmental insistence (see *supra,* n. 5), petitioner agreed to negotiate with the Union toward settlement of the strike, and entered into an agreement on April 5, 1945, which provided, among other things, for the reinstatement of all the strikers (B. A. 107–108; 216, 597–598, 760–761, 817–818, 820–822). During the negotiations the Union agreed to withdraw the unfair labor practices charges which it had filed with the Board, and to waive the claims for back pay for the strikers (B. A. 108; 754, 819–822). When this proposal was submitted to the Board, the Board refused to approve it, and the parties were informed that the Board intended to proceed with the case (B. A. 108; 819–820). Nevertheless, petitioner and the Union entered into a settlement agreement, pursuant to which all the strikers, including the leaders, were offered reinstatement, and the strike thus ended (B. A. 108; 212–213, 216, 758, 820–821).

### B. THE BOARD'S DECISION AND ORDER WITH RESPECT TO THE 1944 STRIKE

The Board found it unnecessary to determine whether the 1944 strike was in violation of an existing contract, or whether petitioner's unfair labor practices and infractions of the contract had so broken the contract that the employees were no longer bound by the "no strike" clause (B. A. 2). The Board held that even if the strike

be deemed illegal, the strikers remained "employees" under the Act unless and until discharged; that prior to November 10 petitioner had refused to reinstate any strikers unless they agreed to return without the strike leaders and to abandon the Union; that on November 10 petitioner promised before Judge Liebowitz to reemploy all the strikers including the leaders; that petitioner thereby "waived or condoned the strikers' alleged misconduct in engaging in the strike"; that the strikers on November 11 made an unconditional offer to return to work; and that petitioner in refusing to reinstate them, and in continuing to insist that they abandon the Union as a price of reinstatement, unlawfully discriminated against them in violation of Section 8 (3) of the Act (B. A. 2–4).

The Board further held that petitioner's agreement with the Union under which the Union agreed to waive back pay did not bind the Board or prevent it from effectuating the public policy of remedying unfair labor practices (B. A. 124). The Board therefore ordered that petitioner make the 1944 strikers whole for any loss of wages between November 11, 1944 (the day upon which they applied for reinstatement following Aufiero's statement before Judge Liebowitz) and the date upon which they were offered reinstatement (B. A. 4, 10).

### C. THE DECISION OF THE COURT BELOW WITH RESPECT TO THE 1944 STRIKE

The court below, in granting enforcement of the Board's order with respect to the 1944 strikers, specifically approved the Board's finding that Aufiero, by his promise before Judge Liebowitz to reinstate the strikers, had waived or condoned any illegality which may have originally attached to the strike (R. A. 167–168). Accordingly, because "the condonation wiped the slate clean" (R. A. 168), the court held that the subsequent refusal to take the men back except under conditions violative of their statutory rights was "a separate and distinct violation of the NLRA independent of what had gone before" (*id.*), and justified the Board's remedial order. The court further held that the Union's waiver of back pay for its members "was not sanctioned by the NLRB [and] does not prevent the NLRB from ordering back pay" (*id.*).

## II.

### THE 1945 STRIKE

Between the settlement of the 1944 strike and the following August, petitioner again ran the gamut of proscribed practices, discharging employees for union activity, refusing to bargain, and committing other acts of interference, restraint, and coercion. As a result of these unfair labor practices, all of which are now admitted by petitioner, the employees on August 22, 1945,

voted to go on strike (B. A. 120; 261–263). Petitioner upon being apprised of the strike vote promptly discharged the three leading union officials, an action which it now concedes violated the Act (B. A. 120; 261–262, 386–387, 389). Because of the discharges the employees voted to go on strike immediately, and the entire plant walked out on August 28 (B. A. 120; 261–263, 386–387, 389, 736). The strike lasted until October 12, 1945, at which time the Union advised the strikers to apply for reinstatement (B. A. 130; 225–227). Petitioner, however, refused to reinstate employees who had been active in the Union or on the picket line, although it was hiring new employees daily (B. A. 131–132; 334, 457–458, 532–533, 543–544, 574–576, 579, 586–588, 736).

Upon these facts, the Board found that the refusal to reinstate the 1945 unfair labor practice strikers violated Section 8 (3) and (1) of the Act, and directed appropriate remedial relief, including reinstatement and back pay for the period following their application for reinstatement (B. A. 4–6, 10). Petitioner contended that the employees had forfeited their right to reinstatement because they had violated the provisions of the War Labor Disputes Act by striking within the 30-day waiting period prescribed in that Act (B. A. 137). The Board, relying on *Hamilton* v. *National Labor Relations Board,* 160 F. 2d 465, 471 (C. A. 6), certiorari denied *sub nom. Kalamazoo Stationery Co.* v. *National Labor Relations Board,*

332 U. S. 762, held that violation of the War Labor Disputes Act did not result in forfeiture of rights under the National Labor Relations Act (*id.*). The court below approved the Board's view, but expressly provided that no back pay should be awarded for the 30-day period commencing August 28 (R. A. 169).

## III.

### THE ORDER TO BARGAIN

The Board found and petitioner does not deny that in 1945 it illegally refused to bargain with the statutory representative of its employees (B. A. 115-116; 786–787). In previous years petitioner had entered into contracts signed both by the International Union and by its Local 844 (B. A. 41). During that period petitioner had refused to negotiate with the Local and had insisted on dealing with representatives of the International (B. A. 358). Thus the sole employee representative who signed the 1945 settlement agreement was Kerrigan, Regional Director of the International (R. A. 129). Some time after petitioner's concededly illegal refusal to bargain in 1945, the International revoked the charter of the Local, took over its assets, and assumed its liabilities (B. A. 8). Consequently, the Board, in remedying the refusal to bargain, directed petitioner to bargain with the International (*id.*). Petitioner resisted enforcement of the order

solely on the ground that its obligation had run jointly to the International and the Local, and did not survive the latter's demise. The court below, observing that "technical rules of agency * * * are not apposite here" and that the Board "is preeminently qualified to decide who is the proper representative of a given group of employees," approved the Board's view "that the International, by taking over the Local, took over entirely the latter's rights and duties to represent the employees previously shared with the International" (R. A. 170).

**ARGUMENT**

1. Petitioner's challenge to the Board's factual finding that petitioner agreed before Judge Liebowitz to reinstate all the 1944 strikers raises no question warranting review by this Court. Aufiero's statement that "these people can come back to work" was made in response to the Union's expressed willingness to repeat its previous attempts to return. Since Aufiero knew that these previous attempts had proved abortive because of his insistence on excluding the union leaders, his promise of reinstatement must necessarily have extended to all the strikers. Had he limited his offer only to the employees previously acceptable to him, he would, as he knew, have been inviting the same impasse which was already keeping "these people" out of the plant, the very impasse which Judge Liebowitz was seeking to break. As the

court below stated, "It is only reasonable to suppose * * * that the judge, Newman, and Aufiero all agreed that the * * * strikers [other than the three extortionists] were to be taken back" (R. A. 168).

In any event, the issue tendered by petitioner goes only to the inference to be drawn from Aufiero's promise to Judge Liebowitz; "granting of the writ would not be warranted merely to review the evidence or inferences drawn from it." *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 178; see also *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U. S. 474, 491.[6]

2. Petitioner does not attack the well-settled rule that one who condones an allegedly illegal strike by agreeing to reinstate all the strikers cannot thereafter rely on the alleged illegality of the strike to justify discrimination against them.[7] Petitioner argues (a) that even if it acted illegally in conditioning reinstatement on the exclusion of the strike leaders, the rank and file strikers are not entitled to back pay because their appli-

[6] Contrary to the suggestion in the petition (pp. 25–26), the decision below does not conflict with that of the Ninth Circuit in *National Labor Relations Board* v. *Warner Bros. Pictures, Inc.*, 28 L. R. R. M. 2575, where the court held that the evidence did not support the Board's finding of condonation because the agreement on which the Board's finding rested was concerned with a different subject matter altogether.

[7] This case thus does not present the second question raised in *Alabama Marble Co.* v. *National Labor Relations Board*, No. 140, this Term, ~~pending on petition for certiorari~~. See Brief in Opposition in that case, pp. 11–17.

cation was conditioned upon the reemployment of all strikers, including the leaders; and (b) that the Board failed expressly to find that a back pay award would effectuate the policy of the Act.

(a) Petitioner's argument ignores the fact that it discriminated against the rank and file strikers not only by denying reinstatement to their leaders but also by conditioning their own reinstatement upon abandonment of the Union and acceptance of a company-dominated union. Certainly the Company cannot claim that the employees were bound to yield to the latter condition in order to establish their right to reemployment. Moreover, petitioner's obligation to reinstate the strikers included an obligation to reinstate all who applied therefor, and not to discriminate among them. "To permit [an employer] to single out a select number of a group of employees for reinstatement and unlawfully to deny reinstatement to others in the same group, acting in concert with them, is discrimination in its purest form against the entire group, for it denies to each member of the group the very protection the Act seeks to afford." *Draper Corporation,* 52 NLRB 1477, 1479. In short, petitioner utilized the employees' application for reinstatement as the occasion not for settling the strike but for destroying the Union. To deprive employees of back pay because, having applied unconditionally for reinstatement, they refused to yield to petitioner's illegal conditions, would invite the commission of

strike-prolonging unfair labor practices and frustrate the objectives of the statute.

(b) Since the Board's customary remedy in the case of a discriminatory refusal to reinstate is to direct reinstatement with back pay, and since reinstatement of the 1944 strikers had already been accomplished at the time of the proceedings before the trial examiner, the Board had no occasion to state in full its reasons for prescribing the customary back pay remedy. Contrary to petitioner's suggestion (Pet., pp. 34–36) the Board has customarily ordered reinstatement and back pay in cases where the applicability of the condonation doctrine relieved the Board of the necessity of passing upon the allegedly illegal character of a strike.[8] Moreover, as the court below observed, "The condonation wiped the slate clean. The subsequent refusal to take the men back [except upon illegal conditions such as joining a company union] was properly held a separate and distinct violation of the NLRA independent of what had gone before. The NLRB's decision as to the

[8] See *Alabama Marble Co.*, 83 NLRB 1047, 1051; *Columbia Pictures Corp.*, 82 NLRB 568, 587; *Hoover Co.*, 90 NLRB 1614, 1625, 1627. In the two earlier cases on which petitioner relies (*Carey Salt Co.*, 70 NLRB 1099, and *Thompson Products Co.*, 70 NLRB 13), the reinstatement remedy was deemed sufficient. But in this case, unlike the *Thompson* and *Carey* cases, the record is replete with evidence of the employer's bad faith and virtually continuous commission of unfair labor practices.

appropriate remedy for such a violation will not justify a remand * * *" (R. A. 168).

3. Private agreements under which one of the parties agrees to waive statutory rights are not binding upon the public agency charged with the enforcement of the statute. *National Labor Relations Board* v. *Prettyman,* 117 F. 2d 786, 792 (C. A. 6); *National Labor Relations Board* v. *General Motors Corp.,* 116 F. 2d 306, 312 (C. A. 7). Moreover, even had the Board been a party to the agreement under which back pay claims were waived, petitioner's subsequent repetition of its unfair labor practices would have justified the Board's taking cognizance of, and remedying, the unfair labor practices which preceded the settlement. *Wallace Corp.* v. *National Labor Relations Board,* 323 U. S. 248, 253–255.*

4. The decision of the court below that the 1945 strikers did not forfeit their rights under the National Labor Relations Act by failing to observe the 30-day "cooling-off" period prescribed by the War Labor Disputes Act accords with that of the only other Court of Appeals which has considered this issue (*Hamilton* v. *National Labor Relations Board,* 160 F. 2d 465, 471 (C. A. 6), certiorari denied *sub nom. Kalamazoo Stationery*

* *National Labor Relations Board* v. *Dorsey Trailers,* 179 F. 2d 589 (C. A. 5), is not in conflict with these settled principles. In that case the court gave effect to a settlement of a grievance which the court held did not arise from, and was not followed by, any unfair labor practice.

*Co.* v. *National Labor Relations Board,* 332 U. S. 762). As shown in our brief in opposition in that case, pp. 14–19, this resolution of the question is clearly correct, and, in any event, the question is no longer of sufficient general importance to warrant review by this Court. Insofar as the decision below differs from that in the *Hamilton* case in holding that no back pay can be awarded for the 30-day period, the decision favors petitioner and hence affords it no ground for seeking review. In any event, the question of petitioner's liability for back pay during the 30-day period is moot, as the Board's order provides only for back pay after the strikers requested reinstatement, a date which occurred after the end of the period in question (R. A. 171–172).

5. Petitioner, conceding that it illegally refused to bargain in August 1945, contends that the Board lost power to remedy this unfair labor practice when the International Union took over the affairs of the Local in August 1946. Apart from the fact that the issue thus raised turns upon the peculiar facts of this case and presents no problem of major significance warranting review, petitioner's contention was properly rejected by the court below. Petitioner had previously held contracts signed jointly by the International and the Local, and indeed had insisted upon dealing with representatives of the International rather than of the Local. Under those circumstances pe-

titioner can hardly be heard to insist that its bargaining obligation did not survive the taking over of the Local by the International.[10]

## CONCLUSION

The decision below is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER, 1951.

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[10] Petitioner's argument (Pet., pp. 43–44) rests on common law rules governing the death of a joint agent. But such rules would be of little relevance in determining the extent of obligation under the Act (cf. *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 521), even were the Union's status merely that of an agent of the employees. Actually, of course, the status of a bargaining representative differs in many respects from that of an ordinary common-law agent. See *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 336, 338; *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192, 198–203.

## APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., 151, *et seq.*) are as follows:

* * * * *

### RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organ-

ization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause

to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

* * * * *

The relevant provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), is as follows:

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such

temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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The relevant provisions of the War Labor Disputes Act (Act of June 25, 1943, 57 Stat. 163, 50 U. S. C. App. 1501, *et seq.*), are as follows:

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Sec. 8 (a) In order that the President may be apprised of labor disputes which threaten seriously to interrupt war production, and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime—

(1) The representative of the employees of a war contractor, shall give to the Secretary of Labor, the National War Labor Board, and the National Labor Relations Board, notice of any such labor dispute involving such contractor and employees, together with a statement of the issues giving rise thereto.

(2) For not less than thirty days after any notice under paragraph (1) is given,

the contractor and his employees shall continue production under all the conditions which prevailed when such dispute arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

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